

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.5289/2007**

% **9th March, 2017**

SH. ZILE SINGH

..... Petitioner

Through: Mr. Arun Bhardwaj and Mr.
Mimansak Bhardwaj, Advs.

versus

FOOD CORPORATION OF INDIA & ORS.

..... Respondents

Through: Mr. Deepak Dewan, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner had challenged the orders passed by the departmental authority and the appellate authority, respective order being dated 20.6.2005 and 25.09.2006, by which petitioner was imposed a punishment of recovery of Rs.2 lacs on account of loss caused by the petitioner to the respondent no.1/Food Corporation of India/employer with respect to bad quality of rice loaded in the special train on 13.4.1994 Ex. Talwandi Bhai to Durgapur. The figure of Rs.2 lacs is calculated being 7% of the amount of the total loss of Rs.19,30,678.24 as out of the total stocks loaded in the special train,

7% of the stocks were from the storage in the control of the petitioner who was working as Assistant Manager (Quality Control).

2. The only issue which is argued before this Court on behalf of the petitioner is that the total loss calculated of Rs.19,30,678.24 is incorrect inasmuch as the loss would actually come to a lesser figure of only Rs.14 lacs. How this loss comes to only Rs.14 lacs is as per arguments as stated below.

3. It is an admitted fact, as per both the parties, that the total quantity of stocks in the subject train was 5780 bags totaling to 5234.40 quintals. The issue is that what is the cost of rice to the respondent no.1 of this total quantity of rice, what is the price at which such rice was sold being the lesser price on account of bad quality rice on account of excess percentage of broken grains and total loss therefore for the entire rice, and consequently the 7% portion of the total loss, inasmuch as, out of the total rice in the subject train only 7% of the stocks were under the storage of the petitioner.

4. There is a chart which is filed at page 97 of the paper book of this writ petition and which is an exhibited document in the departmental proceedings. This chart besides showing the total number of bags in the train at 5780 bags totaling to 5234.40 quintals also gives the rate per quintal at which the rice was sold and which varies

between Rs.751 to Rs.651. With the consent of the parties an average figure of Rs.700 per quintals has been taken by this Court. The figure of 5234.40 quintals when multiplied by the figure of Rs.700 per quintal comes to approximately Rs.36,75,000/- and which figure is taken as Rs.37,00,000/- with the consent of the parties. Therefore, the amount of Rs.37,00,000/- is the price at which the total stocks in the subject train were sold.

5. The question now is that what was the cost price to the respondent no.1 of this total stock of 5234.40 quintals. The cost price of this 5234.40 quintals is stated in the document of the respondent no. 1 itself, and which is said to be an exhibited document in the departmental proceedings, showing that the respondent no.1 has taken the cost price at the time of sale of Rs.972 per quintal. Therefore, the cost price of the total stocks in the subject train would come to approximately Rs.51 lacs being the figure of Rs.972 multiplied by 5234. The loss therefore as per the counsel for the petitioner calculated comes to the difference of Rs.51,00,000 minus Rs.37,00,000/- and which is Rs.14 lacs. It is therefore argued that the enquiry officer has *ex-facie* wrongly taken the loss figure at Rs.19,30,678.24 whereas it should be taken as Rs.14 lacs, and consequently, it is argued that figure

of Rs.2 lacs to be recovered from the petitioner has to be proportionately reduced and which figure would come to Rs.1,50,000/-

6. I have put the aforesaid arguments urged on behalf of the petitioner alongwith the calculations to counsel for the respondent no.1 and the counsel for the respondent no.1 so far as the figures of the total quantity of rice, the cost price/issue price of the respondent no.1 with respect to this total quantity of rice at an average figure of Rs.700 per quintal, the actual sale price of the total stocks of 5234 quintals etc etc, and so far as the figures are concerned, could not seriously dispute the same because they arise from the documents of the respondent no.1 itself, filed as annexures to the writ petition, and said to be part and parcel of the departmental proceedings/enquiry proceedings.

7. Accordingly, I find that the total loss which should be attributable to the petitioner, because the loss is not of Rs.19 lacs but actually is only Rs.14 lacs, and therefore, the impugned order imposing punishment upon the petitioner of Rs.2 lacs is modified to a penalty of Rs.1,50,000/-.

8. The writ petition is accordingly disposed of by sustaining the impugned order, but reducing the penalty amount upon the petitioner to the figure of Rs.1,50,000/-.

MARCH, 09 2017/ib

VALMIKI J. MEHTA, J